

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAY S. LLOYD,	§
	§ No. 173, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1106010666
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 6, 2012
Decided: August 29, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 29th day of September 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Ray S. Lloyd, filed an appeal from the Superior Court’s March 13, 2012 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record before us reflects that, in December 2011, Lloyd entered a plea of guilty to charges of Maintaining a Vehicle for Keeping Controlled Substances and Possession of Marijuana. He was sentenced to a total of three and a half years of Level V incarceration, to be suspended for a period of Level III probation.

(3) A VOP hearing took place in the Superior Court on March 13, 2012. The Superior Court found that Lloyd had committed a VOP and sentenced him to one year at Level V.

(4) In this appeal from his VOP sentence, Lloyd claims that a) the transcript of the VOP hearing does not accurately reflect what was stated by the judge at the hearing; and b) his Level V sentence was excessive because he should only have received a one-step increase in his supervision level under the SENTAC guidelines.

(5) Lloyd's first claim is that the transcript of the VOP hearing is inaccurate. He alleges that, when he and his attorney were standing before the judge, he turned and spoke to his attorney, who covered up the microphone, prompting the judge to advise Lloyd to be quiet and let his attorney speak for him. Lloyd contends that the transcript does not correctly reflect the actual words spoken by the judge during that incident. Lloyd also

states that he told the judge that he had tried to reach his probation officer by telephone, without success, but that the transcript does not reflect that.

(6) This Court has observed that there is no guarantee that “every word uttered during [a hearing] will be made available on appeal. From time to time, minor omissions do occur A transcript or an adequate substitute for a transcript is required only to the extent that it is essential for the presentation of a particular issue on appeal.”² We have reviewed the transcript of Lloyd’s VOP hearing carefully. Assuming, without deciding, that Lloyd’s claim is accurate, we do not find that any of his alleged omissions are significant in the context of his appeal, nor do we find that Lloyd suffered any prejudice as a result. Moreover, the alleged omissions have not hampered the Court in deciding the issues raised by Lloyd in this appeal. Thus, we conclude that Lloyd’s first claim is without merit.

(7) Lloyd’s second claim is that his sentence is excessive because he should have received only a one-step increase in his supervision level pursuant to the SENTAC guidelines. He also appears to suggest that the Superior Court relied on inaccurate information in imposing sentence because he was not involved in the sale of illegal drugs.

² *Bass v. State*, 720 A.2d 540, 541 (Del. 1984) (citing *Draper v. Washington*, 372 U.S. 487 (1963)).

(8) It is well-settled that the SENTAC guidelines are not binding upon the Superior Court.³ Moreover, once a VOP is established, the Superior Court is authorized to impose the full amount of Level V time remaining on the probationer's original sentence, or any lesser sentence.⁴ Lloyd does not claim, nor does the record reflect, that the Superior Court's sentence exceeded the amount of Level V time remaining on his original sentence. To the extent that Lloyd claims that the judge relied on inaccurate information in sentencing him, the record reflects otherwise. There was evidence that Lloyd was in possession of a large quantity of drugs as well as a digital scale at the time of his arrest in 2011. As such, the judge was within her discretion to conclude that Lloyd was involved in the sale of drugs at that time. We, therefore, conclude that Lloyd's second claim also is without merit.

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

³ *Wynn v. State*, 23 A.3d 145, 150 (Del. 2011).

⁴ *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (citing Del. Code Ann. tit. 11, §4334(c)).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice